

**ASSEMBLY BILL**

**No. 2286**

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**Introduced by Assembly Member Wagner**

February 21, 2014

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An act to repeal Chapter 16 (commencing with Section 22350) of Division 8 of, and to add Chapter 5.7 (commencing with Section 6460) to Division 3 of, the Business and Professions Code, relating to process servers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2286, as introduced, Wagner. Process servers.

Existing law requires process servers to register with the county clerk where he or she resides or has a principal place of business. Existing law also requires any corporation or partnership that derives compensation from service of process in this state to register with the county clerk where the corporation or partnership has its principal place of business. Existing law requires the county clerk to retain the certificate of registration, as specified. Existing law also requires the county clerk to receive Live Scan fingerprint results and the presiding judge of the superior court is authorized to review the criminal record of registrants convicted of a felony and to take appropriate action, as specified. Existing law also requires the county clerk to provide a variety of administrative services pertaining to the registration of process servers.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation.

This law would remove oversight of the registration of process servers from the counties and place it within the State Bar of California.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 5.7 (commencing with Section 6460) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 5.7. PROCESS SERVERS

6460. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where that compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the State Bar of California. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the State Bar of California.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees, when serving process related to cases for which the attorney is providing legal services.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

(5) A professional photocopier registered under Section 22450, or an employee thereof, whose only service of process relates to subpoenas for the production of records, which subpoenas specify that the records be copied by that registered professional photocopier.

6461. (a) The certificate of registration of a registrant who is a natural person shall contain the following:

(1) The name, age, address, and telephone number of the registrant.

(2) A statement, signed by the registrant under penalty of perjury, that the registrant has not been convicted of a felony, or,

1 if the registrant has been convicted of a felony, a copy of a  
2 certificate of rehabilitation, expungement, or pardon.

3 (3) A statement that the registrant has been a resident of this  
4 state for a period of one year immediately preceding the filing of  
5 the certificate.

6 (4) A statement that the registrant will perform his or her duties  
7 as a process server in compliance with the provisions of law  
8 governing the service of process in this state.

9 (b) The certificate of registration of a registrant who is a  
10 partnership or corporation shall contain the following:

11 (1) The names, ages, addresses, and telephone numbers of the  
12 general partners or officers.

13 (2) A statement, signed by the general partners or officers under  
14 penalty of perjury, that the general partners or officers have not  
15 been convicted of a felony.

16 (3) A statement that the partnership or corporation has been  
17 organized and existing continuously for a period of one year  
18 immediately preceding the filing of the certificate or a responsible  
19 managing employee, partner, or officer has been previously  
20 registered under this chapter.

21 (4) A statement that the partnership or corporation will perform  
22 its duties as a process server in compliance with the provisions of  
23 law governing the service of process in this state.

24 (c) The State Bar of California shall retain the certificate of  
25 registration for a period of three years following the expiration  
26 date of the certificate, after which time the certificate may be  
27 destroyed if it is scanned or if the conditions specified in Section  
28 26205.1 of the Government Code are met. If the certificate is  
29 scanned, the scanned image shall be retained for a period of 10  
30 years, after which time that image may be destroyed and,  
31 notwithstanding Section 26205.1 of the Government Code, no  
32 reproduction thereof need be made or preserved.

33 6461.5. (a) At the time of filing an initial certificate of  
34 registration or renewing a certificate of registration that has lapsed,  
35 the registrant shall also submit a completed Request for Live Scan  
36 form confirming fingerprint submission to the Department of  
37 Justice and the Federal Bureau of Investigation, in order to verify  
38 that the registrant has not been convicted of a felony. The State  
39 Bar of California shall utilize the Subsequent Arrest Notification

1 Contract provided by the Department of Justice for notifications  
2 subsequent to the initial certificate of registration.

3 (b) If, after receiving the results of the Request for Live Scan,  
4 the State Bar of California is advised that the registrant has been  
5 convicted of a felony, the State Bar of California is authorized to  
6 review the criminal record and, unless the registrant is able to  
7 produce a copy of a certificate of rehabilitation, expungement, or  
8 pardon, as specified in paragraph (2) of subdivision (a) of Section  
9 22351, notify the registrant that the registration is revoked. An  
10 order to show cause for contempt may be issued and served upon  
11 any person who fails to surrender a registered process server  
12 identification card after a notice of revocation.

13 6462. At the time of filing the initial certificate of registration,  
14 a registrant shall pay the following fees to the State Bar of  
15 California:

16 (a) A fee of one hundred dollars (\$100).

17 (b) A fee to cover the actual costs of processing the completed  
18 fingerprint cards when submitted with the initial certificate of  
19 registration.

20 (c) A fee to cover the actual cost of issuing a registered process  
21 server identification card.

22 6463. A certificate of registration shall be accompanied by a  
23 bond of two thousand dollars (\$2,000), executed by an admitted  
24 surety insurer and conditioned upon compliance with the provisions  
25 of this chapter and all laws governing the service of process in this  
26 state. The total aggregate liability on the bond is limited to two  
27 thousand dollars (\$2,000). As an alternative to the bond, the  
28 registrant may deposit with the State Bar of California, cash or a  
29 money order in the amount of two thousand dollars (\$2,000).

30 6464. A certificate of registration shall be effective for a period  
31 of two years or until the date the bond expires, whichever occurs  
32 first. Thereafter, a registrant shall file a new certificate of  
33 registration or a renewal of the certificate of registration and pay  
34 the fee required by Section 6462. A certificate of registration may  
35 be renewed up to 60 days prior to its expiration date and the  
36 effective date of the renewal shall be the date the current  
37 registration expires. The renewal shall be effective for a period of  
38 two years from the effective date or until the expiration date of the  
39 bond, whichever occurs first.

1     6465. (a) The State Bar of California shall maintain a register  
2 of process servers and assign a number and issue an identification  
3 card to each process server. The State Bar of California shall issue  
4 a temporary identification card, for no additional fee, to applicants  
5 who are required to submit Request for Live Scan forms for  
6 background checks to the Federal Bureau of Investigation and the  
7 Department of Justice. This card shall be valid for 120 days. If  
8 clearance is received from the Federal Bureau of Investigation and  
9 the Department of Justice within 120 days, the State Bar of  
10 California shall immediately issue a permanent identification card  
11 to the applicant. Upon request of the applicant, the permanent  
12 identification card shall be mailed to the applicant at his or her  
13 address of record. Upon renewal of a certificate of registration,  
14 the same number shall be assigned, provided there is no lapse in  
15 the period of registration.

16     (b) The temporary and permanent identification cards shall be  
17 not less than 3 ¼ inches by 2 inches and shall contain at the top  
18 the title, "Registered Process Server," followed by the registrant's  
19 name, address, registration number, and date of expiration. In the  
20 case of a natural person, it shall also contain a photograph of the  
21 registrant in the lower left corner. The identification card for a  
22 partnership or corporation registration shall be issued in the name  
23 of the partnership or corporation, and shall not contain a  
24 photograph.

25     6466. A registrant shall be responsible at all times for the good  
26 conduct of his or her employees acting within the course or scope  
27 of their employment, and any person acting as an independent  
28 contractor within the course or scope of the agency relationship  
29 with the registrant.

30     6466.5. (a) In addition to the information required by  
31 subdivision (b) of Section 22360, any proof of service of any  
32 process which is signed by an independent contractor of a registrant  
33 under this chapter shall indicate that the proof of service was signed  
34 as an independent contractor of a registered process server. The  
35 proof of service shall indicate the number assigned pursuant to  
36 Section 6465 of both the independent contractor and the entity  
37 registered under this chapter.

38     (b) No registrant shall permit any individual to sign any proof  
39 of service of any process as an independent contractor unless all  
40 of the following conditions are met:

1 (1) The independent contractor is performing pursuant to a  
2 written independent contractor agreement with the registrant.

3 (2) The independent contractor supplies proof of bonding under  
4 Section 6463, if applicable.

5 (3) The registrant exercises minimal supervision or control over  
6 the means of accomplishing the service of any process assigned  
7 by the registrant. The registrant may communicate a deadline for  
8 the service of process and request notification that such service  
9 has been completed.

10 (4) The registrant imposes no restrictions on the independent  
11 contractor's ability to perform services for others registered under  
12 this chapter.

13 (5) The independent contractor supplies proof that any required  
14 business licenses have been obtained.

15 (c) Persons not meeting the criteria of subdivision (b) shall be  
16 treated as employees of the registrant while persons meeting the  
17 criteria of subdivision (b) shall be treated as independent  
18 contractors.

19 (d) This section shall not preclude an independent determination  
20 of employment under any other provision of law.

21 6467. (a) Any person who recovers damages in any action or  
22 proceeding for injuries caused by a service of process which was  
23 made by a registrant and did not comply with the provisions of  
24 law governing the service of process in this state may recover the  
25 amount of the damages from the bond required by Section 6463.

26 (b) Whenever there has been a recovery against a bond under  
27 subdivision (a), the registrant shall file a new bond or cash deposit  
28 within 30 days to reinstate the bond or cash deposit to the amount  
29 required by Section 6463. If the registrant does not file the bond  
30 within 30 days, the certificate of registration shall be revoked and  
31 the remainder of the bond forfeited to the State Bar of California.

32 6468. (a) A certificate of registration may be revoked or  
33 suspended whenever it has been determined that the registrant has  
34 made a service of process, including service completed by an  
35 employee or independent contractor of the registrant, which does  
36 not comply with the provisions of law governing the service of  
37 process in this state or constitutes an improper service of process  
38 not amounting to a violation of law.

39 (b) An investigation concerning the revocation or suspension  
40 of a certificate of registration may be commenced at any time at

1 the option of the State Bar of California if the State Bar of  
2 California deems it to be appropriate. A complaint by any person  
3 who has alleged that he or she has been injured by a service of  
4 process shall be investigated by the public prosecutor. The  
5 investigation shall determine if the registrant complied with the  
6 provisions of law governing the service of process or constituted  
7 improper service of process not amounting to a violation of the  
8 law.

9 (c) If the public prosecutor determines from the investigation  
10 that cause may exist for the suspension or revocation of the  
11 certificate of registration, he or she shall set the matter for hearing  
12 and give notice to the registrant. That hearing shall be conducted  
13 in accordance with Chapter 5 (commencing with Section 11500)  
14 of Division 3 of Title 2 of the Government Code except that the  
15 decision of the administrative law judge shall be final. For the  
16 purposes of those provisions, the public prosecutor shall be deemed  
17 to be the agency.

18 (d) If, after the hearing, the State Bar of California is notified  
19 after the decision has become effective that the administrative law  
20 judge has directed that the registrant's certificate be suspended or  
21 revoked, the State Bar of California shall forthwith suspend or  
22 revoke the certificate. If the certificate is revoked, the bond or cash  
23 deposit required by Section 6463 shall be forfeited to the State Bar  
24 of California subject to the right of a person to recover against the  
25 bond or cash deposit under Section 6467.

26 6469. Any person who violates any of the provisions of this  
27 chapter is guilty of a misdemeanor.

28 6469.5. Any proof of service of any process which is signed  
29 by a registrant under this chapter shall indicate the number assigned  
30 to the registrant by Section 6465.

31 SEC. 2. Chapter 16 (commencing with Section 22350) of  
32 Division 8 of the Business and Professions Code is repealed.